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Lim Guan Eng v Raja Petra bin Raja Kamarudin

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HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-23NCvC-50–09 OF 2019
MOHD ARIEF JC
25 MAY 2021

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Civil Procedure — Damages — Assessment of damages — Plaintiff claimed to be defamed by defendant — Judgment in default of appearance entered against defendant — Quantum of damages to be awarded

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The plaintiff claimed he was defamed by ten libellous statements made by the defendant as contained in the articles appearing on the website known as Malaysia Today. The court had earlier entered judgment in default of appearance on the defendant with damages to be assessed. The plaintiff gave evidence as to the facts that he believed were relevant to enable the court to assess the amount of damages that ought to be awarded against the defendant.

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Held:

(1) The following factors had been considered: (a) the statements were made by the defendant on-line and could had a vast reach within Malaysian and internationally; (b) at the time the articles were published, the plaintiff was a senior politician and previously held the senior cabinet post as the Malaysian Minister of Finance; (c) the articles were repeated and continued to be published despite the complaints made by the plaintiff to the defendant; (d) the defendant did not make any offer to apologise and did not make any attempt to appear before the court to retract the statements; and (e) the statements had a material impact on the reputation of the plaintiff as a politician and as the Minister of Finance at the material time. Hence, damages for general and aggravated damages was awarded in favour of the plaintiff to the sum of RM600,000, costs of RM10,000 subject to allocator and interest at 5%pa from the date of the writ to the date of full realisation of the same (see paras 8 & 10).

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[Bahasa Malaysia summary

Plaintif mendakwa dia telah difitnah dengan sepuluh kenyataan libel yang dibuat oleh defendan seperti yang terkandung dalam artikel yang terdapat di laman web dikenali sebagai Malaysia Today. Mahkamah sebelum ini telah membuat penghakiman ingkar kehadiran ke atas defendan dengan ganti rugi yang akan dinilai. Plaintif memberikan keterangan tentang fakta yang dipercayainya relevan bagi membolehkan mahkamah menilai jumlah ganti

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A rugi yang sepatutnya diberikan terhadap defendan.

Diputuskan:

(1) Faktor-faktor berikut telah dipertimbangkan: (a) kenyataan dibuat oleh defendan dalam talian dan boleh mencapai jangkauan yang luas dalam Malaysia dan antarabangsa; (b) pada masa artikel itu diterbitkan, plaintif adalah seorang ahli politik kanan dan pernah memegang jawatan kanan kabinet sebagai Menteri Kewangan Malaysia; (c) artikel itu diulang dan terus diterbitkan walaupun terdapat aduan yang dibuat oleh plaintif kepada defendan; (d) defendan tidak membuat sebarang tawaran untuk memohon maaf dan tidak membuat sebarang percubaan untuk hadir ke mahkamah untuk menarik balik kenyataan itu; dan (e) kenyataan tersebut mempunyai kesan material ke atas reputasi plaintif sebagai ahli politik dan sebagai Menteri Kewangan pada masa itu. Oleh itu, ganti rugi bagi ganti rugi am dan teruk telah diberikan memihak kepada plaintif sebanyak RM600,000, kos RM10,000 tertakluk kepada alokator dan faedah pada kadar 5% setahun dari tarikh writ sehingga tarikh realisasi penuh yang sama (lihat perenggan 8 & 10).]

Cases referred to

Cassell & Co Ltd v Broome and another [1972] 1 All ER 801, HL (refd)
Datuk Harris bin Mohamed Salleh v Abdul Jalil bin Ahmad & Anor [1984] 1 MLJ 97 (folld)
Karpal Singh a/l Ram Singh v DP Vijandran [2001] 4 MLJ 161, CA (folld)
Nurul Izzah bt Anwar v Tan Sri Khalid bin Abu Bakar & Anor [2018] MLJU 472; [2018] 7 CLJ 622, HC (refd)
Uren v John Fairfax & Sons Ltd (1966) 117 CLR 118, HC (refd)

Simon Murali (Simon Murali & Co) for the plaintiff.

Mohd Arief JC:

[1] The plaintiff claims he was defamed by ten libellous statements made by the defendant as contained in the articles appearing on the website known as Malaysia Today.

[2] This court had earlier entered judgment in default of appearance on the defendant dated 28 February 2020 with damages to be assessed.

[3] The plaintiff gave evidence as to the facts that he believes are relevant to enable this court to assess the amount of damages that ought to be awarded against the defendant.

PRINCIPLES OF LAW CONCERNING DAMAGES IN LIBEL AND SLANDER

[4] This court is reminded of the purpose of awarding damages in a case concerning libel and slander. I quote part of the judgment of Windeyer J in *Uren v John Fairfax & Sons Pty Ltd* [1967] 117 CLR 118 at p 150:

> It seems to me that, properly speaking a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways — as a vindication of the plaintiff to the public and as a consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money.

[5] Lord Hailsham LC in *Cassell & Co Ltd v Broome and another* [1972] 1 All ER 801 had this to say:

> In case the libel, driven underground, emerges from its lurking place at some future date, (the plaintiff) must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge.

Quite obviously, the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology, or the reaffirmation of the truth of the matters complained of, or the malice of the defendant.

[6] I am also guided by the decision of the Malaysian superior courts in *Datuk Harris bin Mohamed Salleh v Abdul Jalil bin Ahmad & Anor* [1984] 1 MLJ 97 and *Karpal Singh a/l Ram Singh v DP Vijandran* [2001] 4 MLJ 161. The principles of law that were laid out in the above cases are summarised as follows:

(a) the court should consider the conduct of the plaintiff, his or her position, and standing at the time the statements were made or uttered;

(b) the nature and gravity of the statements ie, how they were made, mode and extent of publication;

(c) the conduct of the defendant ie, whether he or she has offered to apologise or retract the alleged defamatory statements; and

(d) mental distress hurt and anxiety suffered by the plaintiff arising out of or in relation to the defamatory statement.

This list is of course not exhaustive and will depend on the facts of each case. This court should also consider the judicial trend as to the amount of damages that have been awarded as of to-date in defamatory cases as a guide as to the amount that should be awarded in this case.

A **[7]** An analysis of the legal position can be seen in the judgment of Faizah Jamaludin JC (as Her Ladyship then was) in *Nurul Izzah bt Anwar v Tan Sri Khalid bin Abu Bakar & Anor* [2018] MLJU 472; [2018] 7 CLJ 622 and I have considered the same in coming to this decision.

B MY DECISION ON QUANTUM OF DAMAGES TO BE AWARDED

[8] I have considered the following factors:

(a) the statements were made by the defendant on-line and can have a vast reach within Malaysian and internationally;

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(b) at the time the articles were published, the plaintiff was a senior politician and previously held the senior cabinet post as the Malaysian Minister of Finance;

D (c) the articles were repeated and continued to be published despite the complaints made by the plaintiff to the defendant;

(d) the defendant did not make any offer to apologise and did not make any attempt to appear before this court to retract the statements; and

E (e) the statements have a material impact on the reputation of the plaintiff as a politician and as the Minister of Finance at the material time.

All the issues and statements made by the plaintiff in his witness statement have been considered by me.

F **[9]** I have also considered the judicial trend in awarding damages for claims for libel. The courts have granted damages for general and aggravated damages within the range of RM200,000 to RM600,000.

G **[10]** In view of all the above factors, I award damages for general and aggravated damages in favour of the plaintiff to the sum of RM600,000, costs of RM10,000 subject to allocator and interest at 5%pa from the date of the writ to the date of full realisation of the same.

H *Order accordingly.*

Reported by Ahmad Ismail Illman Mohd Razali

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